

AMENDED IN ASSEMBLY JUNE 21, 2011

SENATE BILL

No. 559

Introduced by Senator Padilla

(Coauthors: Assembly Members Atkins and Wieckowski)

February 17, 2011

An act to *amend Section 23438 of the Business and Professions Code*, amend Section 51 of the Civil Code, to amend Section 32228 of the Education Code, to amend Section 354.5 of the Elections Code, to amend Sections 11135, 12920, 12921, 12926, 12926.1, 12930, 12931, 12935, 12940, 12944, 12955, 12955.8, 12956.1, 12956.2, and 12993 of the Government Code, to amend Section 868.8 of the Penal Code, to *amend Sections 17269 and 24343.2 of the Revenue and Taxation Code*, and to amend Section 4900 of the Welfare and Institutions Code, relating to civil rights.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as amended, Padilla. Discrimination: genetic information.

The Unruh Civil Rights Act generally prohibits business establishments from discriminating on specified bases.

The California Fair Employment and Housing Act (FEHA) prohibits discrimination in housing and employment on specified bases.

Existing law prohibits discrimination on specified bases against any person in any program or activity conducted, operated, or administered by the state or by any state agency, or that is funded directly by the state, or that receives any financial assistance from the state.

This bill would further prohibit discrimination under the above-described provisions on the basis of genetic information, would define that term, and would making conforming changes.

By expanding the bases upon which discrimination is prohibited under the ~~Unruh Civil Rights Act and FEHA~~ *above-described provisions* to include genetic information, this bill would, *except as specified*, also expand the bases upon which discrimination is prohibited under other antidiscrimination provisions that prohibit discrimination on the same bases as provided for in the ~~Unruh Civil Rights Act and FEHA~~ *above-described provisions*.

Other antidiscrimination provisions include provisions pertaining to the provision of emergency services. Specifically, existing law prohibits the provision of emergency services and care in a health facility from being based upon, or affected by, among other things, any characteristic listed or defined in the Unruh Civil Rights Act. Additionally, existing law provides that as a condition of licensure, each hospital is required to adopt a policy prohibiting discrimination in the provision of emergency services and care based on, among other things, any characteristic listed or defined in the Unruh Civil Rights Act. A violation of these provisions is a misdemeanor.

By adding genetic information to the list of characteristics listed in the Unruh Civil Rights Act, this bill would expand the bases upon which a health facility may not discriminate in the provision of emergency services. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Under FEHA, a person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry, may record a Restrictive Covenant Modification, which existing law requires include a copy of the original document with the illegal language stricken. Before recording the modification document, existing law requires the county recorder to submit the modification document and the original document to the county counsel who is required to determine whether the original document contains an unlawful restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry.

This bill would require the county counsel, additionally, to determine if there exists an unlawful restriction based on genetic information after county counsel receives the modification document and the original document from the county recorder.

Under existing law, a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person is required to place a cover page or stamp on the previously recorded document stating that if the document contains an unlawful restriction, that restriction is void and may be removed by recording a Restrictive Covenant Modification.

The bill would modify the information the county recorder is required to provide on the above-described cover page or stamp to reflect the changes this bill would make in prohibiting restrictions on the basis of genetic information.

By creating new duties for county counsel and county recorders, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Deciphering the sequence of the human genome and other
- 4 advances in genetics open major new opportunities for medical
- 5 progress. New knowledge about the genetic basis of illness will
- 6 allow for earlier detection of illnesses, often long before symptoms
- 7 have begun.
- 8 (b) Genetic testing can allow individuals to take steps to reduce
- 9 the likelihood that they will contract a particular disorder. New
- 10 knowledge about genetics may allow for the development of better
- 11 therapies that are more effective against disease or have fewer side
- 12 effects than current treatments. These rapid advances promise

1 significant medical progress, but also give rise to the potential for
2 misuse of genetic information to discriminate.

3 (c) The early science of genetics became the basis of state laws
4 that provided for the sterilization of persons having presumed
5 genetic “defects” such as mental retardation, mental disease,
6 epilepsy, blindness, and hearing loss, among other conditions. The
7 first sterilization law was enacted in the State of Indiana in 1907.
8 California followed suit in 1909. Thirty states ultimately enacted
9 such laws that resulted in 64,000 people, most of whom were poor,
10 young women, being sterilized. Shamefully, nearly a third of these
11 sterilizations took place in California.

12 (d) Most state laws have since been repealed, and many have
13 been modified to include essential constitutional requirements of
14 due process and equal protection. However, the current explosion
15 in the science of genetics, and the history of sterilization laws by
16 states based on early genetic science, compels legislative action
17 in this area.

18 (e) Automation is exponentially increasing the speed and
19 efficiency of a complete genomic DNA sequence. What took five
20 years of international effort to produce in the mid-1980s can today
21 be completed in two minutes. Genomic sequencing is quickly
22 approaching the point where it will be widely affordable to the
23 general public and, potentially, a covered insurance benefit.

24 (f) Although genes are facially neutral markers, many genetic
25 conditions and disorders are associated with particular racial and
26 ethnic groups and gender. Because some genetic traits are most
27 prevalent in particular groups, members of a particular group may
28 be stigmatized or discriminated against as a result of that genetic
29 information.

30 (g) This form of discrimination was evident in the 1970s, which
31 saw the advent of programs to screen and identify carriers of sickle
32 cell anemia, a disease which afflicts African Americans. Once
33 again, state legislatures began to enact discriminatory laws in the
34 area, and in the early 1970s began mandating genetic screening of
35 all African Americans for sickle cell anemia, leading to
36 discrimination and unnecessary fear.

37 (h) Examples of genetic discrimination in the workplace include
38 the use of preemployment genetic screening at Lawrence Berkeley
39 Laboratory, which led to a court decision in favor of the employees

1 in that case, *Norman-Bloodsaw v. Lawrence Berkeley Laboratory*
2 (9th Cir. 1998) 135 F.3d 1260, 1269.

3 (i) The State of California has a compelling public interest in
4 realizing the medical promise of genomics. It also has a compelling
5 public interest in relieving the fear of discrimination and in
6 prohibiting its actual practice.

7 (j) Although Congress enacted the federal Genetic Information
8 and Nondiscrimination Act of 2008 (P.L. 110-233), its range of
9 protections is incomplete for Californians.

10 *SEC. 2. Section 23438 of the Business and Professions Code*
11 *is amended to read:*

12 23438. (a) Any alcoholic beverage club licensee which restricts
13 membership or the use of its services or facilities on the basis of
14 ancestry or any characteristic listed or defined in Section 11135
15 of the Government Code, *except for genetic information*, shall,
16 when issuing a receipt for expenses which may otherwise be used
17 by taxpayers for deduction purposes pursuant to Section 162(a) of
18 the Internal Revenue Code, for purposes of the Personal Income
19 Tax Law, or Section 24343 of the Revenue and Taxation Code,
20 for purposes of the Bank and Corporation Tax Law, incorporate
21 a printed statement on the receipt as follows:

22 “The expenditures covered by this receipt are nondeductible for
23 state income tax purposes or franchise tax purposes.”

24 (b) For purposes of this section, the following terms have the
25 following meanings:

26 (1) “Expenses” means expenses, as defined in Section 17269
27 or 24343.2 of the Revenue and Taxation Code.

28 (2) “Club” means a club holding an alcoholic beverage license
29 pursuant to the provisions of this division, except a club holding
30 an alcoholic beverage license pursuant to Section 23425.

31 ~~SEC. 2.~~

32 *SEC. 3. Section 51 of the Civil Code is amended to read:*

33 51. (a) This section shall be known, and may be cited, as the
34 Unruh Civil Rights Act.

35 (b) All persons within the jurisdiction of this state are free and
36 equal, and no matter what their sex, race, color, religion, ancestry,
37 national origin, disability, medical condition, genetic information,
38 marital status, or sexual orientation are entitled to the full and equal
39 accommodations, advantages, facilities, privileges, or services in
40 all business establishments of every kind whatsoever.

1 (c) This section shall not be construed to confer any right or
2 privilege on a person that is conditioned or limited by law or that
3 is applicable alike to persons of every sex, race, color, religion,
4 ancestry, national origin, disability, medical condition, marital
5 status, or sexual orientation or to persons regardless of their genetic
6 information.

7 (d) Nothing in this section shall be construed to require any
8 construction, alteration, repair, structural or otherwise, or
9 modification of any sort whatsoever, beyond that construction,
10 alteration, repair, or modification that is otherwise required by
11 other provisions of law, to any new or existing establishment,
12 facility, building, improvement, or any other structure, nor shall
13 anything in this section be construed to augment, restrict, or alter
14 in any way the authority of the State Architect to require
15 construction, alteration, repair, or modifications that the State
16 Architect otherwise possesses pursuant to other laws.

17 (e) For purposes of this section:

18 (1) “Disability” means any mental or physical disability as
19 defined in Sections 12926 and 12926.1 of the Government Code.

20 (2) (A) “Genetic information” means, with respect to any
21 individual, information about any of the following:

22 (i) The individual’s genetic tests.

23 (ii) The genetic tests of family members of the individual.

24 (iii) The manifestation of a disease or disorder in family
25 members of the individual.

26 (B) “Genetic information” includes any request for, or receipt
27 of, genetic services, or participation in clinical research that
28 includes genetic services, by an individual or any family member
29 of the individual.

30 (C) “Genetic information” does not include information about
31 the sex or age of any individual.

32 (3) “Medical condition” has the same meaning as defined in
33 subdivision (h) of Section 12926 of the Government Code.

34 (4) “Religion” includes all aspects of religious belief,
35 observance, and practice.

36 (5) “Sex” has the same meaning as defined in subdivision (p)
37 of Section 12926 of the Government Code.

38 (6) “Sex, race, color, religion, ancestry, national origin,
39 disability, medical condition, genetic information, marital status,
40 or sexual orientation” includes a perception that the person has

1 any particular characteristic or characteristics within the listed
2 categories or that the person is associated with a person who has,
3 or is perceived to have, any particular characteristic or
4 characteristics within the listed categories.

5 (7) “Sexual orientation” has the same meaning as defined in
6 subdivision (r) of Section 12926 of the Government Code.

7 (f) A violation of the right of any individual under the *federal*
8 Americans with Disabilities Act of 1990 (P.L. 101-336) shall also
9 constitute a violation of this section.

10 ~~SEC. 3.~~

11 *SEC. 4.* Section 32228 of the Education Code is amended to
12 read:

13 32228. (a) It is the intent of the Legislature that public schools
14 serving pupils in any of grades 8 to 12, inclusive, have access to
15 supplemental resources to establish programs and strategies that
16 promote school safety and emphasize violence prevention among
17 children and youth in the public schools.

18 (b) It is also the intent of the Legislature that public schools
19 have access to supplemental resources to combat bias on the basis
20 of race, color, religion, ancestry, national origin, disability, gender,
21 or sexual orientation, as defined in subdivision (r) of Section 12926
22 of the Government Code, and to prevent and respond to acts of
23 hate violence and bias related incidents. Sexual orientation shall
24 not include pedophilia.

25 (c) It is further the intent of the Legislature that schoolsites
26 receiving funds pursuant to this article accomplish all of the
27 following goals:

28 (1) Teach pupils techniques for resolving conflicts without
29 violence.

30 (2) Train school staff and administrators to support and promote
31 conflict resolution and mediation techniques for resolving conflicts
32 between and among pupils.

33 (3) Reduce incidents of violence at the schoolsite with an
34 emphasis on prevention and early detection.

35 (4) Provide age-appropriate instruction in domestic violence
36 prevention, dating violence prevention, and interpersonal violence
37 prevention.

38 ~~SEC. 4.~~

39 *SEC. 5.* Section 354.5 of the Elections Code is amended to
40 read:

1 354.5. (a) “Signature” includes either of the following:

2 (1) A person’s mark if the name of the person affixing the mark
3 is written near the mark by a witness over 18 years of age
4 designated by the person and the designee subscribes his or her
5 own name as a witness thereto. For purposes of this paragraph, a
6 signature stamp may be used as a mark, provided that the
7 authorized user complies with the provisions of this paragraph.

8 (2) An impression made by the use of a signature stamp pursuant
9 to the requirements specified in subdivision (c).

10 (b) A mark attested as provided in paragraph (1) of subdivision
11 (a), or an impression made by a signature stamp as provided in
12 paragraph (2) of subdivision (a), may serve as a signature for any
13 purpose specified in this code, including a sworn statement.

14 (c) An authorized user of a signature stamp may use it to affix
15 a signature to a document or writing any time that a signature is
16 required by this code, provided that all of the following conditions,
17 as applicable, are met:

18 (1) A signature stamp used to obtain a ballot or vote by mail
19 ballot in any local, state, or federal election shall be used only by
20 the authorized user of that signature stamp.

21 (2) A signature stamp shall be affixed by the authorized user in
22 the presence of the Secretary of State, his or her designee, the local
23 elections official, or his or her designee, to obtain a ballot, in any
24 local, state, or federal election unless the authorized user of the
25 signature stamp votes by vote by mail ballot. If the owner of a
26 signature stamp votes by vote by mail ballot, he or she shall affix
27 the signature stamp on the identification envelope in accordance
28 with Section 3019.

29 (d) A signature affixed with a signature stamp by an authorized
30 user in accordance with this section shall be treated in the same
31 manner as a signature made in writing.

32 (e) A registered voter or any person who is eligible to vote, who
33 qualifies as an authorized user pursuant to paragraph (1) of
34 subdivision (g), may use a signature stamp only after he or she
35 first submits his or her affidavit of registration or a new affidavit
36 of registration, whichever is applicable, in the presence of a county
37 elections official, using the signature stamp to sign the affidavit.

38 (f) The Secretary of State shall report to the Legislature not later
39 than January 1, 2009, regarding the use of signature stamps during
40 the 2008 elections.

(g) The following definitions apply for purposes of this section:

(1) “Authorized user” means either of the following:

(A) A person with a disability who, by reason of that disability, is unable to write and who owns a signature stamp.

(B) A person using the signature stamp on behalf of the owner of the stamp with the owner’s express consent and in the presence of the owner.

(2) “Disability” means a medical condition, mental disability, or physical disability, as those terms are defined in subdivisions (i), (j), and (l) of Section 12926 of the Government Code.

(3) “Signature stamp” means a stamp that contains the impression of any of the following:

(A) The actual signature of a person with a disability.

(B) A mark or symbol that is adopted by the person with the disability.

(C) A signature of the name of a person with a disability that is made by another person and is adopted by the person with the disability.

~~SEC. 5.~~

SEC. 6. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, *genetic information*, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the *federal* Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

1 (c) (1) As used in this section, “disability” means any mental
2 or physical disability, as defined in Section 12926.

3 (2) The Legislature finds and declares that the amendments
4 made to this act are declarative of existing law. The Legislature
5 further finds and declares that in enacting Senate Bill 105 of the
6 2001–02 Regular Session (Chapter 1102 of the Statutes of 2002),
7 it was the intention of the Legislature to apply subdivision (d) to
8 the California State University in the same manner that
9 subdivisions (a), (b), and (c) already applied to the California State
10 University, notwithstanding Section 11000. In clarifying that the
11 California State University is subject to paragraph (2) of
12 subdivision (d), it is not the intention of the Legislature to increase
13 the cost of developing or procuring electronic and information
14 technology. The California State University shall, however, in
15 determining the cost of developing or procuring electronic or
16 information technology, consider whether technology that meets
17 the standards applicable pursuant to paragraph (2) of subdivision
18 (d) will reduce the long-term cost incurred by the California State
19 University in providing access or accommodations to future users
20 of this technology who are persons with disabilities, as required
21 by existing law, including this section, Title II of the *federal*
22 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
23 and following), and Section 504 of the Rehabilitation Act of 1973
24 (29 U.S.C. Sec. 794).

25 (d) (1) The Legislature finds and declares that the ability to
26 utilize electronic or information technology is often an essential
27 function for successful employment in the current work world.

28 (2) In order to improve accessibility of existing technology, and
29 therefore increase the successful employment of individuals with
30 disabilities, particularly blind and visually impaired and deaf and
31 hard-of-hearing persons, state governmental entities, in developing,
32 procuring, maintaining, or using electronic or information
33 technology, either indirectly or through the use of state funds by
34 other entities, shall comply with the accessibility requirements of
35 Section 508 of the *federal* Rehabilitation Act of 1973, as amended
36 (29 U.S.C. Sec. 794d), and regulations implementing that act as
37 set forth in Part 1194 of Title 36 of the Federal Code of
38 Regulations.

39 (3) Any entity that contracts with a state or local entity subject
40 to this section for the provision of electronic or information

1 technology or for the provision of related services shall agree to
2 respond to, and resolve any complaint regarding accessibility of
3 its products or services that is brought to the attention of the entity.

4 (e) As used in this section, “sex” and “sexual orientation” have
5 the same meanings as those terms are defined in subdivisions (q)
6 and (r) of Section 12926.

7 (f) As used in this section, “race, national origin, ethnic group
8 identification, religion, age, sex, sexual orientation, color, or
9 disability” includes a perception that a person has any of those
10 characteristics or that the person is associated with a person who
11 has, or is perceived to have, any of those characteristics.

12 (g) *As used in this section, “genetic information” has the same*
13 *definition as in paragraph (2) of subdivision (e) of Section 51 of*
14 *the Civil Code.*

15 ~~SEC. 6.~~

16 SEC. 7. Section 12920 of the Government Code is amended
17 to read:

18 12920. It is hereby declared as the public policy of this state
19 that it is necessary to protect and safeguard the right and
20 opportunity of all persons to seek, obtain, and hold employment
21 without discrimination or abridgment on account of race, religious
22 creed, color, national origin, ancestry, physical disability, mental
23 disability, medical condition, genetic information, marital status,
24 sex, age, or sexual orientation.

25 It is recognized that the practice of denying employment
26 opportunity and discriminating in the terms of employment for
27 these reasons foments domestic strife and unrest, deprives the state
28 of the fullest utilization of its capacities for development and
29 advancement, and substantially and adversely affects the interest
30 of employees, employers, and the public in general.

31 Further, the practice of discrimination because of race, color,
32 religion, sex, sexual orientation, marital status, national origin,
33 ancestry, familial status, source of income, disability, or genetic
34 information in housing accommodations is declared to be against
35 public policy.

36 It is the purpose of this part to provide effective remedies that
37 will eliminate these discriminatory practices.

38 This part shall be deemed an exercise of the police power of the
39 state for the protection of the welfare, health, and peace of the
40 people of this state.

1 ~~SEC. 7.~~

2 *SEC. 8.* Section 12921 of the Government Code is amended
3 to read:

4 12921. (a) The opportunity to seek, obtain, and hold
5 employment without discrimination because of race, religious
6 creed, color, national origin, ancestry, physical disability, mental
7 disability, medical condition, genetic information, marital status,
8 sex, age, or sexual orientation is hereby recognized as and declared
9 to be a civil right.

10 (b) The opportunity to seek, obtain, and hold housing without
11 discrimination because of race, color, religion, sex, sexual
12 orientation, marital status, national origin, ancestry, familial status,
13 source of income, disability, genetic information, or any other
14 basis prohibited by Section 51 of the Civil Code is hereby
15 recognized as and declared to be a civil right.

16 ~~SEC. 8.~~

17 *SEC. 9.* Section 12926 of the Government Code is amended
18 to read:

19 12926. As used in this part in connection with unlawful
20 practices, unless a different meaning clearly appears from the
21 context:

22 (a) “Affirmative relief” or “prospective relief” includes the
23 authority to order reinstatement of an employee, awards of backpay,
24 reimbursement of out-of-pocket expenses, hiring, transfers,
25 reassignments, grants of tenure, promotions, cease and desist
26 orders, posting of notices, training of personnel, testing, expunging
27 of records, reporting of records, and any other similar relief that
28 is intended to correct unlawful practices under this part.

29 (b) “Age” refers to the chronological age of any individual who
30 has reached his or her 40th birthday.

31 (c) “Employee” does not include any individual employed by
32 his or her parents, spouse, or child, or any individual employed
33 under a special license in a nonprofit sheltered workshop or
34 rehabilitation facility.

35 (d) “Employer” includes any person regularly employing five
36 or more persons, or any person acting as an agent of an employer,
37 directly or indirectly, the state or any political or civil subdivision
38 of the state, and cities, except as follows:

39 “Employer” does not include a religious association or
40 corporation not organized for private profit.

1 (e) “Employment agency” includes any person undertaking for
2 compensation to procure employees or opportunities to work.

3 (f) “Essential functions” means the fundamental job duties of
4 the employment position the individual with a disability holds or
5 desires. “Essential functions” does not include the marginal
6 functions of the position.

7 (1) A job function may be considered essential for any of several
8 reasons, including, but not limited to, any one or more of the
9 following:

10 (A) The function may be essential because the reason the
11 position exists is to perform that function.

12 (B) The function may be essential because of the limited number
13 of employees available among whom the performance of that job
14 function can be distributed.

15 (C) The function may be highly specialized, so that the
16 incumbent in the position is hired for his or her expertise or ability
17 to perform the particular function.

18 (2) Evidence of whether a particular function is essential
19 includes, but is not limited to, the following:

20 (A) The employer’s judgment as to which functions are essential.

21 (B) Written job descriptions prepared before advertising or
22 interviewing applicants for the job.

23 (C) The amount of time spent on the job performing the function.

24 (D) The consequences of not requiring the incumbent to perform
25 the function.

26 (E) The terms of a collective bargaining agreement.

27 (F) The work experiences of past incumbents in the job.

28 (G) The current work experience of incumbents in similar jobs.

29 (g) (1) “Genetic information” means with respect to any
30 individual, information about any of the following:

31 (A) The individual’s genetic tests.

32 (B) The genetic tests of family members of the individual.

33 (C) The manifestation of a disease or disorder in family members
34 of the individual.

35 (2) “Genetic information” includes any request for, or receipt
36 of, genetic services, or participation in clinical research that
37 includes genetic services, by an individual or any family member
38 of the individual.

39 (3) “Genetic information” does not include information about
40 the sex or age of any individual.

1 (h) “Labor organization” includes any organization that exists
2 and is constituted for the purpose, in whole or in part, of collective
3 bargaining or of dealing with employers concerning grievances,
4 terms or conditions of employment, or of other mutual aid or
5 protection.

6 (i) “Medical condition” means either of the following:

7 (1) Any health impairment related to or associated with a
8 diagnosis of cancer or a record or history of cancer.

9 (2) Genetic characteristics. For purposes of this section, “genetic
10 characteristics” means either of the following:

11 (A) Any scientifically or medically identifiable gene or
12 chromosome, or combination or alteration thereof, that is known
13 to be a cause of a disease or disorder in a person or his or her
14 offspring, or that is determined to be associated with a statistically
15 increased risk of development of a disease or disorder, and that is
16 presently not associated with any symptoms of any disease or
17 disorder.

18 (B) Inherited characteristics that may derive from the individual
19 or family member, that are known to be a cause of a disease or
20 disorder in a person or his or her offspring, or that are determined
21 to be associated with a statistically increased risk of development
22 of a disease or disorder, and that are presently not associated with
23 any symptoms of any disease or disorder.

24 (j) “Mental disability” includes, but is not limited to, all of the
25 following:

26 (1) Having any mental or psychological disorder or condition,
27 such as mental retardation, organic brain syndrome, emotional or
28 mental illness, or specific learning disabilities, that limits a major
29 life activity. For purposes of this section:

30 (A) “Limits” shall be determined without regard to mitigating
31 measures, such as medications, assistive devices, or reasonable
32 accommodations, unless the mitigating measure itself limits a
33 major life activity.

34 (B) A mental or psychological disorder or condition limits a
35 major life activity if it makes the achievement of the major life
36 activity difficult.

37 (C) “Major life activities” shall be broadly construed and shall
38 include physical, mental, and social activities and working.

1 (2) Any other mental or psychological disorder or condition not
2 described in paragraph (1) that requires special education or related
3 services.

4 (3) Having a record or history of a mental or psychological
5 disorder or condition described in paragraph (1) or (2), which is
6 known to the employer or other entity covered by this part.

7 (4) Being regarded or treated by the employer or other entity
8 covered by this part as having, or having had, any mental condition
9 that makes achievement of a major life activity difficult.

10 (5) Being regarded or treated by the employer or other entity
11 covered by this part as having, or having had, a mental or
12 psychological disorder or condition that has no present disabling
13 effect, but that may become a mental disability as described in
14 paragraph (1) or (2).

15 “Mental disability” does not include sexual behavior disorders,
16 compulsive gambling, kleptomania, pyromania, or psychoactive
17 substance use disorders resulting from the current unlawful use of
18 controlled substances or other drugs.

19 (k) “On the bases enumerated in this part” means or refers to
20 discrimination on the basis of one or more of the following: race,
21 religious creed, color, national origin, ancestry, physical disability,
22 mental disability, medical condition, genetic information, marital
23 status, sex, age, or sexual orientation.

24 (l) “Physical disability” includes, but is not limited to, all of the
25 following:

26 (1) Having any physiological disease, disorder, condition,
27 cosmetic disfigurement, or anatomical loss that does both of the
28 following:

29 (A) Affects one or more of the following body systems:
30 neurological, immunological, musculoskeletal, special sense
31 organs, respiratory, including speech organs, cardiovascular,
32 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
33 and endocrine.

34 (B) Limits a major life activity. For purposes of this section:

35 (i) “Limits” shall be determined without regard to mitigating
36 measures such as medications, assistive devices, prosthetics, or
37 reasonable accommodations, unless the mitigating measure itself
38 limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) “Major life activities” shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(m) Notwithstanding subdivisions (j) and (l), if the definition of “disability” used in the *federal* Americans with Disabilities Act of 1990 (P.L. 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (j) or (l), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (j) and (l).

(n) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(o) “Reasonable accommodation” may include either of the following:

1 (1) Making existing facilities used by employees readily
2 accessible to, and usable by, individuals with disabilities.

3 (2) Job restructuring, part-time or modified work schedules,
4 reassignment to a vacant position, acquisition or modification of
5 equipment or devices, adjustment or modifications of examinations,
6 training materials or policies, the provision of qualified readers or
7 interpreters, and other similar accommodations for individuals
8 with disabilities.

9 (p) “Religious creed,” “religion,” “religious observance,”
10 “religious belief,” and “creed” include all aspects of religious
11 belief, observance, and practice.

12 (q) “Sex” includes, but is not limited to, pregnancy, childbirth,
13 or medical conditions related to pregnancy or childbirth. “Sex”
14 also includes, but is not limited to, a person’s gender, as defined
15 in Section 422.56 of the Penal Code.

16 (r) “Sexual orientation” means heterosexuality, homosexuality,
17 and bisexuality.

18 (s) “Supervisor” means any individual having the authority, in
19 the interest of the employer, to hire, transfer, suspend, lay off,
20 recall, promote, discharge, assign, reward, or discipline other
21 employees, or the responsibility to direct them, or to adjust their
22 grievances, or effectively to recommend that action, if, in
23 connection with the foregoing, the exercise of that authority is not
24 of a merely routine or clerical nature, but requires the use of
25 independent judgment.

26 (t) “Undue hardship” means an action requiring significant
27 difficulty or expense, when considered in light of the following
28 factors:

29 (1) The nature and cost of the accommodation needed.

30 (2) The overall financial resources of the facilities involved in
31 the provision of the reasonable accommodations, the number of
32 persons employed at the facility, and the effect on expenses and
33 resources or the impact otherwise of these accommodations upon
34 the operation of the facility.

35 (3) The overall financial resources of the covered entity, the
36 overall size of the business of a covered entity with respect to the
37 number of employees, and the number, type, and location of its
38 facilities.

39 (4) The type of operations, including the composition, structure,
40 and functions of the workforce of the entity.

(5) The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

~~SEC. 9.~~

SEC. 10. Section 12926.1 of the Government Code is amended to read:

12926.1. The Legislature finds and declares as follows:

(a) The law of this state in the area of disabilities provides protections independent from those in the federal Americans with Disabilities Act of 1990 (P.L. 101-336). Although the federal act provides a floor of protection, this state's law has always, even prior to passage of the federal act, afforded additional protections.

(b) The law of this state contains broad definitions of physical disability, mental disability, and medical condition. It is the intent of the Legislature that the definitions of physical disability and mental disability be construed so that applicants and employees are protected from discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling.

(c) Physical and mental disabilities include, but are not limited to, chronic or episodic conditions such as HIV/AIDS, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar disorder, multiple sclerosis, and heart disease. In addition, the Legislature has determined that the definitions of "physical disability" and "mental disability" under the law of this state require a "limitation" upon a major life activity, but do not require, as does the *federal* Americans with Disabilities Act of 1990, a "substantial limitation." This distinction is intended to result in broader coverage under the law of this state than under that federal act. Under the law of this state, whether a condition limits a major life activity shall be determined without respect to any mitigating measures, unless the mitigating measure itself limits a major life activity, regardless of federal law under the Americans with Disabilities Act of 1990. Further, under the law of this state, "working" is a major life activity, regardless of whether the actual or perceived working limitation implicates a particular employment or a class or broad range of employments.

(d) Notwithstanding any interpretation of law in *Cassista v. Community Foods* (1993) 5 Cal.4th 1050, the Legislature intends (1) for state law to be independent of the *federal* Americans with Disabilities Act of 1990, (2) to require a "limitation" rather than

1 a “substantial limitation” of a major life activity, and (3) by
2 enacting paragraph (4) of subdivision (j) and paragraph (4) of
3 subdivision (l) of Section 12926, to provide protection when an
4 individual is erroneously or mistakenly believed to have any
5 physical or mental condition that limits a major life activity.

6 (e) The Legislature affirms the importance of the interactive
7 process between the applicant or employee and the employer in
8 determining a reasonable accommodation, as this requirement has
9 been articulated by the Equal Employment Opportunity
10 Commission in its interpretive guidance of the *federal* Americans
11 with Disabilities Act of 1990.

12 ~~SEC. 10.~~

13 *SEC. 11.* Section 12930 of the Government Code is amended
14 to read:

15 12930. The department shall have the following functions,
16 powers, and duties:

17 (a) To establish and maintain a principal office and any other
18 offices within the state as are necessary to carry out the purposes
19 of this part.

20 (b) To meet and function at any place within the state.

21 (c) To appoint attorneys, investigators, conciliators, and other
22 employees as it may deem necessary, fix their compensation within
23 the limitations provided by law, and prescribe their duties.

24 (d) To obtain upon request and utilize the services of all
25 governmental departments and agencies and, in addition, with
26 respect to housing discrimination, of conciliation councils.

27 (e) To adopt, promulgate, amend, and rescind suitable rules and
28 regulations to carry out the functions and duties of the department
29 pursuant to this part.

30 (f) (1) To receive, investigate, and conciliate complaints
31 alleging practices made unlawful pursuant to Chapter 6
32 (commencing with Section 12940).

33 (2) To receive, investigate, and conciliate complaints alleging
34 a violation of Section 51, 51.5, 51.7, 54, 54.1, or 54.2 of the Civil
35 Code. The remedies and procedures of this part shall be
36 independent of any other remedy or procedure that might apply.

37 (g) In connection with any matter under investigation or in
38 question before the department pursuant to a complaint filed under
39 Section 12960, 12961, or 12980:

1 (1) To issue subpoenas to require the attendance and testimony
2 of witnesses and the production of books, records, documents, and
3 physical materials.

4 (2) To administer oaths, examine witnesses under oath and take
5 evidence, and take depositions and affidavits.

6 (3) To issue written interrogatories.

7 (4) To request the production for inspection and copying of
8 books, records, documents, and physical materials.

9 (5) To petition the superior courts to compel the appearance
10 and testimony of witnesses, the production of books, records,
11 documents, and physical materials, and the answering of
12 interrogatories.

13 (h) To issue accusations pursuant to Section 12965 or 12981
14 and to prosecute those accusations before the commission.

15 (i) To issue those publications and those results of investigations
16 and research as in its judgment will tend to promote good will and
17 minimize or eliminate discrimination in employment on the bases
18 enumerated in this part and discrimination in housing because of
19 race, religious creed, color, sex, marital status, national origin,
20 ancestry, familial status, disability, genetic information, or sexual
21 orientation.

22 (j) To investigate, approve, certify, decertify, monitor, and
23 enforce nondiscrimination programs proposed by a contractor to
24 be engaged in pursuant to Section 12990.

25 (k) To render annually to the Governor and to the Legislature
26 a written report of its activities and of its recommendations.

27 ~~SEC. 11.~~

28 *SEC. 12.* Section 12931 of the Government Code is amended
29 to read:

30 12931. The department may also provide assistance to
31 communities and persons therein in resolving disputes,
32 disagreements, or difficulties relating to discriminatory practices
33 based on race, religious creed, color, national origin, ancestry,
34 physical disability, mental disability, medical condition, genetic
35 information, marital status, sex, familial status, age, or sexual
36 orientation that impair the rights of persons in those communities
37 under the Constitution or laws of the United States or of this state.
38 The services of the department may be made available in cases of
39 these disputes, disagreements, or difficulties only when, in its
40 judgment, peaceful relations among the citizens of the community

involved are threatened thereby. The department's services are to be made available only upon the request of an appropriate state or local public body, or upon the request of any person directly affected by any such dispute, disagreement, or difficulty.

The assistance of the department pursuant to this section shall be limited to endeavors at investigation, conference, conciliation, and persuasion.

~~SEC. 12.~~

SEC. 13. Section 12935 of the Government Code is amended to read:

12935. The commission shall have the following functions, powers, and duties:

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply all provisions of this part, (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12981, and (3) to carry out all other functions and duties of the commission pursuant to this part.

(b) To conduct hearings pursuant to Sections 12967 and 12981.

(c) To conduct mediations at the request of the department at any time after a complaint is filed pursuant to Section 12960, 12961, or 12980. The department may withdraw a request for mediation at any time to pursue an investigation.

(d) To establish and maintain a principal office within the state and to meet and function at any place within the state.

(e) To appoint an executive secretary, and any attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(g) To create or provide financial or technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination

1 because of race, religious creed, color, national origin, ancestry,
2 familial status, disability, genetic information, marital status, sex,
3 or sexual orientation and to foster, through community effort or
4 otherwise, good will, cooperation, and conciliation among the
5 groups and elements of the population of the state and to make
6 recommendations to the commission for the development of
7 policies and procedures in general. These advisory agencies and
8 conciliation councils shall be composed of representative citizens,
9 serving without pay.

10 (h) With respect to findings and orders made pursuant to this
11 part, to establish a system of published opinions that shall serve
12 as precedent in interpreting and applying the provisions of this
13 part. Commission findings, orders, and opinions in an adjudicative
14 proceeding are subject to Section 11425.60.

15 (i) To issue publications and results of inquiries and research
16 that in its judgment will tend to promote good will and minimize
17 or eliminate unlawful discrimination. These publications shall
18 include an annual report to the Governor and the Legislature of its
19 activities and recommendations.

20 (j) Notwithstanding Sections 11370.3 and 11502, to appoint
21 administrative law judges, as it may deem necessary, to conduct
22 hearings and mediations. Each administrative law judge shall
23 possess the qualifications established by the State Personnel Board
24 for the particular class of position involved. The hearing officers
25 of the commission shall become administrative law judges on
26 January 1, 2005.

27 ~~SEC. 13.~~

28 *SEC. 14.* Section 12940 of the Government Code is amended
29 to read:

30 12940. It is an unlawful employment practice, unless based
31 upon a bona fide occupational qualification, or, except where based
32 upon applicable security regulations established by the United
33 States or the State of California:

34 (a) For an employer, because of the race, religious creed, color,
35 national origin, ancestry, physical disability, mental disability,
36 medical condition, genetic information, marital status, sex, age,
37 or sexual orientation of any person, to refuse to hire or employ the
38 person or to refuse to select the person for a training program
39 leading to employment, or to bar or to discharge the person from
40 employment or from a training program leading to employment,

1 or to discriminate against the person in compensation or in terms,
2 conditions, or privileges of employment.

3 (1) This part does not prohibit an employer from refusing to
4 hire or discharging an employee with a physical or mental
5 disability, or subject an employer to any legal liability resulting
6 from the refusal to employ or the discharge of an employee with
7 a physical or mental disability, where the employee, because of
8 his or her physical or mental disability, is unable to perform his
9 or her essential duties even with reasonable accommodations, or
10 cannot perform those duties in a manner that would not endanger
11 his or her health or safety or the health or safety of others even
12 with reasonable accommodations.

13 (2) This part does not prohibit an employer from refusing to
14 hire or discharging an employee who, because of the employee's
15 medical condition, is unable to perform his or her essential duties
16 even with reasonable accommodations, or cannot perform those
17 duties in a manner that would not endanger the employee's health
18 or safety or the health or safety of others even with reasonable
19 accommodations. Nothing in this part shall subject an employer
20 to any legal liability resulting from the refusal to employ or the
21 discharge of an employee who, because of the employee's medical
22 condition, is unable to perform his or her essential duties, or cannot
23 perform those duties in a manner that would not endanger the
24 employee's health or safety or the health or safety of others even
25 with reasonable accommodations.

26 (3) Nothing in this part relating to discrimination on account of
27 marital status shall do either of the following:

28 (A) Affect the right of an employer to reasonably regulate, for
29 reasons of supervision, safety, security, or morale, the working of
30 spouses in the same department, division, or facility, consistent
31 with the rules and regulations adopted by the commission.

32 (B) Prohibit bona fide health plans from providing additional
33 or greater benefits to employees with dependents than to those
34 employees without or with fewer dependents.

35 (4) Nothing in this part relating to discrimination on account of
36 sex shall affect the right of an employer to use veteran status as a
37 factor in employee selection or to give special consideration to
38 Vietnam-era veterans.

39 (5) (A) This part does not prohibit an employer from refusing
40 to employ an individual because of his or her age if the law

1 compels or provides for that refusal. Promotions within the existing
2 staff, hiring or promotion on the basis of experience and training,
3 rehiring on the basis of seniority and prior service with the
4 employer, or hiring under an established recruiting program from
5 high schools, colleges, universities, or trade schools do not, in and
6 of themselves, constitute unlawful employment practices.

7 (B) The provisions of this part relating to discrimination on the
8 basis of age do not prohibit an employer from providing health
9 benefits or health care reimbursement plans to retired persons that
10 are altered, reduced, or eliminated when the person becomes
11 eligible for Medicare health benefits. This subparagraph applies
12 to all retiree health benefit plans and contractual provisions or
13 practices concerning retiree health benefits and health care
14 reimbursement plans in effect on or after January 1, 2011.

15 (b) For a labor organization, because of the race, religious creed,
16 color, national origin, ancestry, physical disability, mental
17 disability, medical condition, genetic information, marital status,
18 sex, age, or sexual orientation of any person, to exclude, expel, or
19 restrict from its membership the person, or to provide only
20 second-class or segregated membership or to discriminate against
21 any person because of the race, religious creed, color, national
22 origin, ancestry, physical disability, mental disability, medical
23 condition, genetic information, marital status, sex, age, or sexual
24 orientation of the person in the election of officers of the labor
25 organization or in the selection of the labor organization's staff or
26 to discriminate in any way against any of its members or against
27 any employer or against any person employed by an employer.

28 (c) For any person to discriminate against any person in the
29 selection or training of that person in any apprenticeship training
30 program or any other training program leading to employment
31 because of the race, religious creed, color, national origin, ancestry,
32 physical disability, mental disability, medical condition, genetic
33 information, marital status, sex, age, or sexual orientation of the
34 person discriminated against.

35 (d) For any employer or employment agency to print or circulate
36 or cause to be printed or circulated any publication, or to make
37 any non-job-related inquiry of an employee or applicant, either
38 verbal or through use of an application form, that expresses,
39 directly or indirectly, any limitation, specification, or discrimination
40 as to race, religious creed, color, national origin, ancestry, physical

1 disability, mental disability, medical condition, genetic information,
2 marital status, sex, age, or sexual orientation, or any intent to make
3 any such limitation, specification, or discrimination. This part does
4 not prohibit an employer or employment agency from inquiring
5 into the age of an applicant, or from specifying age limitations,
6 where the law compels or provides for that action.

7 (e) (1) Except as provided in paragraph (2) or (3), for any
8 employer or employment agency to require any medical or
9 psychological examination of an applicant, to make any medical
10 or psychological inquiry of an applicant, to make any inquiry
11 whether an applicant has a mental disability or physical disability
12 or medical condition, or to make any inquiry regarding the nature
13 or severity of a physical disability, mental disability, or medical
14 condition.

15 (2) Notwithstanding paragraph (1), an employer or employment
16 agency may inquire into the ability of an applicant to perform
17 job-related functions and may respond to an applicant's request
18 for reasonable accommodation.

19 (3) Notwithstanding paragraph (1), an employer or employment
20 agency may require a medical or psychological examination or
21 make a medical or psychological inquiry of a job applicant after
22 an employment offer has been made but prior to the
23 commencement of employment duties, provided that the
24 examination or inquiry is job related and consistent with business
25 necessity and that all entering employees in the same job
26 classification are subject to the same examination or inquiry.

27 (f) (1) Except as provided in paragraph (2), for any employer
28 or employment agency to require any medical or psychological
29 examination of an employee, to make any medical or psychological
30 inquiry of an employee, to make any inquiry whether an employee
31 has a mental disability, physical disability, or medical condition,
32 or to make any inquiry regarding the nature or severity of a physical
33 disability, mental disability, or medical condition.

34 (2) Notwithstanding paragraph (1), an employer or employment
35 agency may require any examinations or inquiries that it can show
36 to be job related and consistent with business necessity. An
37 employer or employment agency may conduct voluntary medical
38 examinations, including voluntary medical histories, which are
39 part of an employee health program available to employees at that
40 worksite.

1 (g) For any employer, labor organization, or employment agency
2 to harass, discharge, expel, or otherwise discriminate against any
3 person because the person has made a report pursuant to Section
4 11161.8 of the Penal Code that prohibits retaliation against hospital
5 employees who report suspected patient abuse by health facilities
6 or community care facilities.

7 (h) For any employer, labor organization, employment agency,
8 or person to discharge, expel, or otherwise discriminate against
9 any person because the person has opposed any practices forbidden
10 under this part or because the person has filed a complaint, testified,
11 or assisted in any proceeding under this part.

12 (i) For any person to aid, abet, incite, compel, or coerce the
13 doing of any of the acts forbidden under this part, or to attempt to
14 do so.

15 (j) (1) For an employer, labor organization, employment agency,
16 apprenticeship training program or any training program leading
17 to employment, or any other person, because of race, religious
18 creed, color, national origin, ancestry, physical disability, mental
19 disability, medical condition, genetic information, marital status,
20 sex, age, or sexual orientation, to harass an employee, an applicant,
21 or a person providing services pursuant to a contract. Harassment
22 of an employee, an applicant, or a person providing services
23 pursuant to a contract by an employee, other than an agent or
24 supervisor, shall be unlawful if the entity, or its agents or
25 supervisors, knows or should have known of this conduct and fails
26 to take immediate and appropriate corrective action. An employer
27 may also be responsible for the acts of nonemployees, with respect
28 to sexual harassment of employees, applicants, or persons providing
29 services pursuant to a contract in the workplace, where the
30 employer, or its agents or supervisors, knows or should have known
31 of the conduct and fails to take immediate and appropriate
32 corrective action. In reviewing cases involving the acts of
33 nonemployees, the extent of the employer's control and any other
34 legal responsibility which the employer may have with respect to
35 the conduct of those nonemployees shall be considered. An entity
36 shall take all reasonable steps to prevent harassment from
37 occurring. Loss of tangible job benefits shall not be necessary in
38 order to establish harassment.

1 (2) The provisions of this subdivision are declaratory of existing
2 law, except for the new duties imposed on employers with regard
3 to harassment.

4 (3) An employee of an entity subject to this subdivision is
5 personally liable for any harassment prohibited by this section that
6 is perpetrated by the employee, regardless of whether the employer
7 or covered entity knows or should have known of the conduct and
8 fails to take immediate and appropriate corrective action.

9 (4) (A) For purposes of this subdivision only, “employer” means
10 any person regularly employing one or more persons or regularly
11 receiving the services of one or more persons providing services
12 pursuant to a contract, or any person acting as an agent of an
13 employer, directly or indirectly, the state, or any political or civil
14 subdivision of the state, and cities. The definition of “employer”
15 in subdivision (d) of Section 12926 applies to all provisions of this
16 section other than this subdivision.

17 (B) Notwithstanding subparagraph (A), for purposes of this
18 subdivision, “employer” does not include a religious association
19 or corporation not organized for private profit, except as provided
20 in Section 12926.2.

21 (C) For purposes of this subdivision, “harassment” because of
22 sex includes sexual harassment, gender harassment, and harassment
23 based on pregnancy, childbirth, or related medical conditions.

24 (5) For purposes of this subdivision, “a person providing services
25 pursuant to a contract” means a person who meets all of the
26 following criteria:

27 (A) The person has the right to control the performance of the
28 contract for services and discretion as to the manner of
29 performance.

30 (B) The person is customarily engaged in an independently
31 established business.

32 (C) The person has control over the time and place the work is
33 performed, supplies the tools and instruments used in the work,
34 and performs work that requires a particular skill not ordinarily
35 used in the course of the employer’s work.

36 (k) For an employer, labor organization, employment agency,
37 apprenticeship training program, or any training program leading
38 to employment, to fail to take all reasonable steps necessary to
39 prevent discrimination and harassment from occurring.

(l) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

~~SEC. 14.~~

SEC. 15. Section 12944 of the Government Code is amended to read:

1 12944. (a) It shall be unlawful for a licensing board to require
2 any examination or establish any other qualification for licensing
3 that has an adverse impact on any class by virtue of its race, creed,
4 color, national origin or ancestry, sex, age, medical condition,
5 genetic information, physical disability, mental disability, or sexual
6 orientation, unless the practice can be demonstrated to be job
7 related.

8 Where the commission, after hearing, determines that an
9 examination is unlawful under this subdivision, the licensing board
10 may continue to use and rely on the examination until such time
11 as judicial review by the superior court of the determination is
12 exhausted.

13 If an examination or other qualification for licensing is
14 determined to be unlawful under this section, that determination
15 shall not void, limit, repeal, or otherwise affect any right, privilege,
16 status, or responsibility previously conferred upon any person by
17 the examination or by a license issued in reliance on the
18 examination or qualification.

19 (b) It shall be unlawful for a licensing board to fail or refuse to
20 make reasonable accommodation to an individual's mental or
21 physical disability or medical condition.

22 (c) It shall be unlawful for any licensing board, unless
23 specifically acting in accordance with federal equal employment
24 opportunity guidelines or regulations approved by the commission,
25 to print or circulate or cause to be printed or circulated any
26 publication, or to make any non-job-related inquiry, either verbal
27 or through use of an application form, which expresses, directly
28 or indirectly, any limitation, specification, or discrimination as to
29 race, religious creed, color, national origin, ancestry, physical
30 disability, mental disability, medical condition, genetic information,
31 sex, age, or sexual orientation or any intent to make any such
32 limitation, specification, or discrimination. Nothing in this
33 subdivision shall prohibit any licensing board from making, in
34 connection with prospective licensure or certification, an inquiry
35 as to, or a request for information regarding, the physical fitness
36 of applicants if that inquiry or request for information is directly
37 related and pertinent to the license or the licensed position the
38 applicant is applying for. Nothing in this subdivision shall prohibit
39 any licensing board, in connection with prospective examinations,
40 licensure, or certification, from inviting individuals with physical

1 or mental disabilities to request reasonable accommodations or
2 from making inquiries related to reasonable accommodations.

3 (d) It is unlawful for a licensing board to discriminate against
4 any person because the person has filed a complaint, testified, or
5 assisted in any proceeding under this part.

6 (e) It is unlawful for any licensing board to fail to keep records
7 of applications for licensing or certification for a period of two
8 years following the date of receipt of the applications.

9 (f) As used in this section, “licensing board” means any state
10 board, agency, or authority in the State and Consumer Services
11 Agency that has the authority to grant licenses or certificates which
12 are prerequisites to employment eligibility or professional status.

13 ~~SEC. 15.~~

14 *SEC. 16.* Section 12955 of the Government Code is amended
15 to read:

16 12955. It shall be unlawful:

17 (a) For the owner of any housing accommodation to discriminate
18 against or harass any person because of the race, color, religion,
19 sex, sexual orientation, marital status, national origin, ancestry,
20 familial status, source of income, disability, or genetic information
21 of that person.

22 (b) For the owner of any housing accommodation to make or
23 to cause to be made any written or oral inquiry concerning the
24 race, color, religion, sex, sexual orientation, marital status, national
25 origin, ancestry, familial status, disability, or genetic information
26 of any person seeking to purchase, rent, or lease any housing
27 accommodation.

28 (c) For any person to make, print, or publish, or cause to be
29 made, printed, or published any notice, statement, or advertisement,
30 with respect to the sale or rental of a housing accommodation that
31 indicates any preference, limitation, or discrimination based on
32 race, color, religion, sex, sexual orientation, marital status, national
33 origin, ancestry, familial status, source of income, disability, or
34 genetic information or an intention to make that preference,
35 limitation, or discrimination.

36 (d) For any person subject to the provisions of Section 51 of
37 the Civil Code, as that section applies to housing accommodations,
38 to discriminate against any person on the basis of sex, sexual
39 orientation, color, race, religion, ancestry, national origin, familial
40 status, marital status, disability, genetic information, source of

1 income, or on any other basis prohibited by that section. Selection
2 preferences based on age, imposed in connection with a federally
3 approved housing program, do not constitute age discrimination
4 in housing.

5 (e) For any person, bank, mortgage company or other financial
6 institution that provides financial assistance for the purchase,
7 organization, or construction of any housing accommodation to
8 discriminate against any person or group of persons because of
9 the race, color, religion, sex, sexual orientation, marital status,
10 national origin, ancestry, familial status, source of income,
11 disability, or genetic information in the terms, conditions, or
12 privileges relating to the obtaining or use of that financial
13 assistance.

14 (f) For any owner of housing accommodations to harass, evict,
15 or otherwise discriminate against any person in the sale or rental
16 of housing accommodations when the owner's dominant purpose
17 is retaliation against a person who has opposed practices unlawful
18 under this section, informed law enforcement agencies of practices
19 believed unlawful under this section, has testified or assisted in
20 any proceeding under this part, or has aided or encouraged a person
21 to exercise or enjoy the rights secured by this part. Nothing herein
22 is intended to cause or permit the delay of an unlawful detainer
23 action.

24 (g) For any person to aid, abet, incite, compel, or coerce the
25 doing of any of the acts or practices declared unlawful in this
26 section, or to attempt to do so.

27 (h) For any person, for profit, to induce any person to sell or
28 rent any dwelling by representations regarding the entry or
29 prospective entry into the neighborhood of a person or persons of
30 a particular race, color, religion, sex, sexual orientation, marital
31 status, ancestry, disability, genetic information, source of income,
32 familial status, or national origin.

33 (i) For any person or other organization or entity whose business
34 involves real estate-related transactions to discriminate against
35 any person in making available a transaction, or in the terms and
36 conditions of a transaction, because of race, color, religion, sex,
37 sexual orientation, marital status, national origin, ancestry, source
38 of income, familial status, disability, or genetic information.

39 (j) To deny a person access to, or membership or participation
40 in, a multiple listing service, real estate brokerage organization,

1 or other service because of race, color, religion, sex, sexual
2 orientation, marital status, ancestry, disability, genetic information,
3 familial status, source of income, or national origin.

4 (k) To otherwise make unavailable or deny a dwelling based
5 on discrimination because of race, color, religion, sex, sexual
6 orientation, familial status, source of income, disability, genetic
7 information, or national origin.

8 (l) To discriminate through public or private land use practices,
9 decisions, and authorizations because of race, color, religion, sex,
10 sexual orientation, familial status, marital status, disability, genetic
11 information, national origin, source of income, or ancestry.
12 Discrimination includes, but is not limited to, restrictive covenants,
13 zoning laws, denials of use permits, and other actions authorized
14 under the Planning and Zoning Law (Title 7 (commencing with
15 Section 65000)), that make housing opportunities unavailable.

16 Discrimination under this subdivision also includes the existence
17 of a restrictive covenant, regardless of whether accompanied by a
18 statement that the restrictive covenant is repealed or void.

19 (m) As used in this section, “race, color, religion, sex, sexual
20 orientation, marital status, national origin, ancestry, familial status,
21 source of income, disability, or genetic information” includes a
22 perception that the person has any of those characteristics or that
23 the person is associated with a person who has, or is perceived to
24 have, any of those characteristics.

25 (n) To use a financial or income standard in the rental of housing
26 that fails to account for the aggregate income of persons residing
27 together or proposing to reside together on the same basis as the
28 aggregate income of married persons residing together or proposing
29 to reside together.

30 (o) In instances where there is a government rent subsidy, to
31 use a financial or income standard in assessing eligibility for the
32 rental of housing that is not based on the portion of the rent to be
33 paid by the tenant.

34 (p) (1) For the purposes of this section, “source of income”
35 means lawful, verifiable income paid directly to a tenant or paid
36 to a representative of a tenant. For the purposes of this section, a
37 landlord is not considered a representative of a tenant.

38 (2) For the purposes of this section, it shall not constitute
39 discrimination based on source of income to make a written or
40 oral inquiry concerning the level or source of income.

~~SEC. 16.~~

SEC. 17. Section 12955.8 of the Government Code is amended to read:

12955.8. For purposes of this article, in connection with unlawful practices:

(a) Proof of an intentional violation of this article includes, but is not limited to, an act or failure to act that is otherwise covered by this part, that demonstrates an intent to discriminate in any manner in violation of this part. A person intends to discriminate if race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information is a motivating factor in committing a discriminatory housing practice even though other factors may have also motivated the practice. An intent to discriminate may be established by direct or circumstantial evidence.

(b) Proof of a violation causing a discriminatory effect is shown if an act or failure to act that is otherwise covered by this part, and that has the effect, regardless of intent, of unlawfully discriminating on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information. A business establishment whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the business establishment can establish that the action or inaction is necessary to the operation of the business and effectively carries out the significant business need it is alleged to serve. In cases that do not involve a business establishment, the person whose action or inaction has an unintended discriminatory effect shall not be considered to have committed an unlawful housing practice in violation of this part if the person can establish that the action or inaction is necessary to achieve an important purpose sufficiently compelling to override the discriminatory effect and effectively carries out the purpose it is alleged to serve.

(1) Any determination of a violation pursuant to this subdivision shall consider whether or not there are feasible alternatives that would equally well or better accomplish the purpose advanced with a less discriminatory effect.

(2) For purposes of this subdivision, the term “business establishment” shall have the same meaning as in Section 51 of the Civil Code.

~~SEC. 17.~~

SEC. 18. Section 12956.1 of the Government Code is amended to read:

12956.1. (a) As used in this section, “association,” “governing documents,” and “declaration” have the same meanings as set forth in Section 1351 of the Civil Code.

(b) (1) A county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person shall place a cover page or stamp on the first page of the previously recorded document or documents stating, in at least 14-point boldface type, the following:

“If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

(c) Any person who records a document for the express purpose of adding a racially restrictive covenant is guilty of a misdemeanor. The county recorder shall not incur any liability for recording the document. Notwithstanding any other provision of law, a prosecution for a violation of this subdivision shall commence within three years after the discovery of the recording of the document.

~~SEC. 18.~~

SEC. 19. Section 12956.2 of the Government Code is amended to read:

12956.2. (a) A person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of

1 Section 12955 may record a document titled Restrictive Covenant
2 Modification. The county recorder may choose to waive the fee
3 prescribed for recording and indexing instruments pursuant to
4 Section 27361 in the case of the modification document provided
5 for in this section. The modification document shall include a
6 complete copy of the original document containing the unlawfully
7 restrictive language with the unlawfully restrictive language
8 stricken.

9 (b) Before recording the modification document, the county
10 recorder shall submit the modification document and the original
11 document to the county counsel who shall determine whether the
12 original document contains an unlawful restriction based on race,
13 color, religion, sex, sexual orientation, familial status, marital
14 status, disability, genetic information, national origin, source of
15 income as defined in subdivision (p) of Section 12955, or ancestry.
16 The county counsel shall return the documents and inform the
17 county recorder of its determination. The county recorder shall
18 refuse to record the modification document if the county counsel
19 finds that the original document does not contain an unlawful
20 restriction as specified in this paragraph.

21 (c) The modification document shall be indexed in the same
22 manner as the original document being modified. It shall contain
23 a recording reference to the original document in the form of a
24 book and page or instrument number, and date of the recording.

25 (d) Subject to covenants, conditions, and restrictions that were
26 recorded after the recording of the original document that contains
27 the unlawfully restrictive language and subject to covenants,
28 conditions, and restrictions that will be recorded after the
29 Restrictive Covenant Modification, the restrictions in the
30 Restrictive Covenant Modification, once recorded, are the only
31 restrictions having effect on the property. The effective date of the
32 terms and conditions of the modification document shall be the
33 same as the effective date of the original document.

34 (e) The county recorder shall make available to the public
35 Restrictive Covenant Modification forms.

36 (f) If the holder of an ownership interest of record in property
37 causes to be recorded a modified document pursuant to this section
38 that contains modifications not authorized by this section, the
39 county recorder shall not incur liability for recording the document.
40 The liability that may result from the unauthorized recordation is

1 the sole responsibility of the holder of the ownership interest of
2 record who caused the modified recordation.

3 (g) This section does not apply to persons holding an ownership
4 interest in property that is part of a common interest development
5 as defined in subdivision (c) of Section 1351 of the Civil Code if
6 the board of directors of that common interest development is
7 subject to the requirements of subdivision (b) of Section 1352.5
8 of the Civil Code.

9 ~~SEC. 19.~~

10 *SEC. 20.* Section 12993 of the Government Code is amended
11 to read:

12 12993. (a) The provisions of this part shall be construed
13 liberally for the accomplishment of the purposes of this part.
14 Nothing contained in this part shall be deemed to repeal any of the
15 provisions of the Civil Rights Law or of any other law of this state
16 relating to discrimination because of race, religious creed, color,
17 national origin, ancestry, physical disability, mental disability,
18 medical condition, genetic information, marital status, sex, age,
19 or sexual orientation, unless those provisions provide less
20 protection to the enumerated classes of persons covered under this
21 part.

22 (b) Nothing contained in this part relating to discrimination in
23 employment on account of sex or medical condition shall be
24 deemed to affect the operation of the terms or conditions of any
25 bona fide retirement, pension, employee benefit, or insurance plan,
26 provided the terms or conditions are in accordance with customary
27 and reasonable or actuarially sound underwriting practices.

28 (c) While it is the intention of the Legislature to occupy the field
29 of regulation of discrimination in employment and housing
30 encompassed by the provisions of this part, exclusive of all other
31 laws banning discrimination in employment and housing by any
32 city, city and county, county, or other political subdivision of the
33 state, nothing contained in this part shall be construed, in any
34 manner or way, to limit or restrict the application of Section 51 of
35 the Civil Code.

36 ~~SEC. 20.~~

37 *SEC. 21.* Section 868.8 of the Penal Code is amended to read:

38 868.8. Notwithstanding any other provision of law, in any
39 criminal proceeding in which the defendant is charged with a
40 violation of Section 243.4, 261, 273a, 273d, 285, 286, 288, 288a,

1 288.5, or 289, subdivision (1) of Section 314, Section 647.6, or
2 former Section 647a, or any crime that constitutes domestic
3 violence defined in Section 13700, committed with or upon a
4 person with a disability or a minor under the age of ~~11~~ 11 years
5 of age, the court shall take special precautions to provide for the
6 comfort and support of the person with a disability or minor and
7 to protect him or her from coercion, intimidation, or undue
8 influence as a witness, including, but not limited to, any of the
9 following:

10 (a) In the court's discretion, the witness may be allowed
11 reasonable periods of relief from examination and
12 cross-examination during which he or she may retire from the
13 courtroom. The judge may also allow other witnesses in the
14 proceeding to be examined when the person with a disability or
15 child witness retires from the courtroom.

16 (b) Notwithstanding Section 68110 of the Government Code,
17 in his or her discretion, the judge may remove his or her robe if
18 the judge believes that this formal attire intimidates the person
19 with a disability or the minor.

20 (c) In the court's discretion the judge, parties, witnesses, support
21 persons, and court personnel may be relocated within the courtroom
22 to facilitate a more comfortable and personal environment for the
23 person with a disability or child witness.

24 (d) In the court's discretion, the taking of the testimony of the
25 person with a disability or the minor may be limited to normal
26 school hours if there is no good cause to take the testimony of the
27 person with a disability or the minor during other hours.

28 (e) For the purposes of this section, the term "disability" is
29 defined in subdivision (j) of Section 12926 of the Government
30 Code.

31 *SEC. 22. Section 17269 of the Revenue and Taxation Code is*
32 *amended to read:*

33 17269. Whereas, the people of the State of California desire
34 to promote and achieve tax equity and fairness among all the state's
35 citizens and further desire to conform to the public policy of
36 nondiscrimination, the Legislature hereby enacts the following for
37 these reasons and for no other purpose:

38 (a) The provisions of Section 162 (a) of the Internal Revenue
39 Code shall not be applicable to expenses incurred by a taxpayer
40 with respect to expenditures made at, or payments made to, a club

1 which restricts membership or the use of its services or facilities
2 on the basis of ancestry or any characteristic listed or defined in
3 Section 11135 of the Government Code, *except for genetic*
4 *information*.

5 (b) A club described in subdivision (a) holding an alcoholic
6 beverage license pursuant to Division 9 (commencing with Section
7 23000) of the Business and Professions Code, except a club holding
8 an alcoholic beverage license pursuant to Section 23425 thereof,
9 shall provide on each receipt furnished to a taxpayer a printed
10 statement as follows:

11 “The expenditures covered by this receipt are nondeductible for
12 state income tax purposes or franchise tax purposes.”

13 (c) For purposes of this section:

14 (1) “Expenses” means those expenses otherwise deductible
15 under Section 162(a) of the Internal Revenue Code, except for
16 subdivision (a), and includes, but is not limited to, club membership
17 dues and assessments, food and beverage expenses, expenses for
18 services furnished by the club, and reimbursements or salary
19 adjustments to officers or employees for any of the preceding
20 expenses.

21 (2) “Club” means a club as defined in Division 9 (commencing
22 with Section 23000) of the Business and Professions Code, except
23 a club as defined in Section 23425 thereof.

24 *SEC. 23. Section 24343.2 of the Revenue and Taxation Code*
25 *is amended to read:*

26 24343.2. Whereas, the people of the State of California desire
27 to promote and achieve tax equity and fairness among all the state’s
28 citizens and further desire to conform to the public policy of
29 nondiscrimination, the Legislature hereby enacts the following for
30 these reasons and for no other purpose:

31 (a) No deduction shall be allowed under Section 24343 for
32 expenses incurred by a taxpayer with respect to expenditures made
33 at, or payments made to, a club which restricts membership or the
34 use of its services or facilities on the basis of ancestry or any
35 characteristic listed or defined in Section 11135 of the Government
36 Code, *except for genetic information*.

37 (b) A club described in subdivision (a) holding an alcoholic
38 beverage license pursuant to Division 9 (commencing with Section
39 23000) of the Business and Professions Code, except a club holding
40 an alcoholic beverage license pursuant to Section 23425 thereof,

1 shall provide on each receipt furnished to a taxpayer a printed
2 statement as follows:

3 “The expenditures covered by this receipt are nondeductible for
4 state income tax purposes or franchise tax purposes.”

5 (c) For purposes of this section:

6 (1) “Expenses” means those expenses otherwise deductible
7 under Section 24343, except for subdivision (a), and includes, but
8 is not limited to, club membership dues and assessments, food and
9 beverage expenses, expenses for services furnished by the club,
10 and reimbursements or salary adjustments to officers or employees
11 for any of the preceding expenses.

12 (2) “Club” means a club as defined in Division 9 (commencing
13 with Section 23000) of the Business and Professions Code, except
14 a club as defined in Section 23425 thereof.

15 ~~SEC. 24.~~

16 *SEC. 24.* Section 4900 of the Welfare and Institutions Code is
17 amended to read:

18 4900. (a) The definitions contained in this section shall govern
19 the construction of this division, unless the context requires
20 otherwise. These definitions shall not be construed to alter or
21 impact the definitions or other provisions of the Elder Abuse and
22 Dependent Adult Civil Protection Act (Chapter 11 (commencing
23 with Section 15600)), or Chapter 13 (commencing with Section
24 15750), of Part 3 of Division 9.

25 (b) “Abuse” means an act, or failure to act, that would constitute
26 abuse as that term is defined in federal regulations pertaining to
27 the authority of protection and advocacy agencies, including
28 Section 51.2 of Title 42 of the Code of Federal Regulations or
29 Section 1386.19 of Title 45 of the Code of Federal Regulations.
30 “Abuse” also means an act, or failure to act, that would constitute
31 abuse as that term is defined in Section 15610.07 of this code or
32 Section 11165.6 of the Penal Code.

33 (c) “Complaint” has the same meaning as “complaint” as defined
34 in federal statutes and regulations pertaining to the authority of
35 protection and advocacy agencies, including Section 10802(1) of
36 Title 42 of the United States Code, Section 51.2 of Title 42 of the
37 Code of Federal Regulations, or Section 1386.19 of Title 45 of the
38 Code of Federal Regulations.

39 (d) “Disability” means a developmental disability, as defined
40 in Section 15002(8) of Title 42 of the United States Code, a mental

1 illness, as defined in Section 10802(4) of Title 42 of the United
2 States Code, a disability within the meaning of the *federal*
3 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
4 et seq.), as defined in Section 12102(2) of Title 42 of the United
5 States Code, or a disability within the meaning of the California
6 Fair Employment and Housing Act (Part 2.8 (commencing with
7 Section 12900) of Division 3 of Title 2 of the Government Code),
8 as defined in subdivision (j) or (l) of Section 12926 of the
9 Government Code.

10 (e) “Facility” or “program” means a public or private facility
11 or program providing services, support, care, or treatment to
12 persons with disabilities, even if only on an as-needed basis or
13 under contractual arrangement. “Facility” or “program” includes,
14 but is not limited to, a hospital, a long-term health care facility, a
15 community living arrangement for people with disabilities,
16 including a group home, a board and care home, an individual
17 residence or apartment of a person with a disability where services
18 are provided, a day program, a juvenile detention facility, a
19 homeless shelter, a jail, or a prison, including all general areas, as
20 well as special, mental health, or forensic units. The term includes
21 any facility licensed under Division 2 (commencing with Section
22 1200) of the Health and Safety Code and any facility that is
23 unlicensed but is not exempt from licensure as provided in
24 subdivision (a) of Section 1503.5 of the Health and Safety Code.
25 The term also includes a public or private school or other institution
26 or program providing education, training, habilitation, therapeutic,
27 or residential services to persons with disabilities.

28 (f) “Legal guardian,” “conservator,” or “legal representative”
29 means a person appointed by a state court or agency empowered
30 under state law to appoint and review the legal guardian,
31 conservator, or legal representative, as appropriate. With respect
32 to an individual described under paragraph (2) of subdivision (i),
33 this person is one who has the legal authority to consent to health
34 or mental health care or treatment on behalf of the individual. With
35 respect to an individual described under paragraphs (1) or (3) of
36 subdivision (i), this person is one who has the legal authority to
37 make all decisions on behalf of the individual. These terms include
38 the parent of a minor who has legal custody of the minor. These
39 terms do not include a person acting solely as a representative
40 payee, a person acting solely to handle financial matters, an

1 attorney or other person acting on behalf of an individual with a
2 disability solely in individual legal matters, or an official or his or
3 her designee who is responsible for the provision of treatment or
4 services to an individual with a disability.

5 (g) “Neglect” means a negligent act, or omission to act, that
6 would constitute neglect as that term is defined in federal statutes
7 and regulations pertaining to the authority of protection and
8 advocacy agencies, including Section 10802(5) of Title 42 of the
9 United States Code, Section 51.2 of Title 42 of the Code of Federal
10 Regulations, or Section 1386.19 of Title 45 of the Code of Federal
11 Regulations. “Neglect” also means a negligent act, or omission to
12 act, that would constitute neglect as that term is defined in
13 subdivision (b) of Section 15610.07 of this code or Section 11165.2
14 of the Penal Code.

15 (h) “Probable cause” to believe that an individual has been
16 subject to abuse or neglect, or is at significant risk of being
17 subjected to abuse or neglect, exists when the protection and
18 advocacy agency determines that it is objectively reasonable for
19 a person to entertain that belief. The individual making a probable
20 cause determination may base the decision on reasonable inferences
21 drawn from his or her experience or training regarding similar
22 incidents, conditions, or problems that are usually associated with
23 abuse or neglect. Information supporting a probable cause
24 determination may result from monitoring or other activities,
25 including, but not limited to, media reports and newspaper articles.

26 (i) “Protection and advocacy agency” means the private
27 nonprofit corporation designated by the Governor in this state
28 pursuant to federal law for the protection and advocacy of the
29 rights of persons with disabilities, including the following:

30 (1) People with developmental disabilities, as authorized under
31 the federal Developmental Disabilities Assistance and Bill of
32 Rights Act of 2000, contained in Chapter 144 (commencing with
33 Section 15001) of Title 42 of the United States Code.

34 (2) People with mental illness, as authorized under the federal
35 Protection and Advocacy for Mentally Ill Individuals Amendments
36 Act of 1991, contained in Chapter 114 (commencing with Section
37 10801) of Title 42 of the United States Code.

38 (3) People with disabilities within the meaning of the *federal*
39 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
40 et seq.) as defined in Section 12102(2) of Title 42 of the United

1 States Code, who do not have a developmental disability as defined
2 in Section 15002(8) of Title 42 of the United States Code, people
3 with a mental illness as defined in Section 10802(4) of Title 42 of
4 the United States Code, and who are receiving services under the
5 federal Protection and Advocacy of Individual Rights Act as
6 defined in Section 794e of Title 29 of the United States Code, or
7 people with a disability within the meaning of the California Fair
8 Employment and Housing Act (Part 2.8 (commencing with Section
9 12900) of Division 3 of Title 2 of the Government Code), as
10 defined in subdivision (j) or (l) of Section 12926 of the Government
11 Code.

12 (j) “Reasonable unaccompanied access” means access that
13 permits the protection and advocacy agency, without undue
14 interference, to monitor, inspect, and observe conditions in facilities
15 and programs, to meet and communicate with residents and service
16 recipients privately and confidentially on a regular basis, formally
17 or informally, by telephone, mail, electronic mail, and in person,
18 and to review records privately and confidentially, in a manner
19 that minimizes interference with the activities of the program or
20 service, that respects residents’ privacy interests and honors a
21 resident’s request to terminate an interview, and that does not
22 jeopardize the physical health or safety of facility or program staff,
23 residents, service recipients, or protection and advocacy agency
24 staff.

25 ~~SEC. 22.~~

26 *SEC. 25.* No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution for certain
28 costs that may be incurred by a local agency or school district
29 because, in that regard, this act creates a new crime or infraction,
30 eliminates a crime or infraction, or changes the penalty for a crime
31 or infraction, within the meaning of Section 17556 of the
32 Government Code, or changes the definition of a crime within the
33 meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 However, if the Commission on State Mandates determines that
36 this act contains other costs mandated by the state, reimbursement
37 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O